CEEP COMMENTS ON THE FUTURE PROPOSAL FROM THE EUROPEAN COMMISSION FOR REVISING THE WRITTEN STATEMENT DIRECTIVE IN THE FRAMEWORK OF THE EUROPEAN PILLAR OF SOCIAL RIGHTS.

CEEP developed a mandate for negotiating the revision of the written statement directive with its Social Partners sister organisations. Understanding that no negotiations will take place due to the gap between employers and Trade-Unions, CEEP wishes to send its comments on the future EC proposal following the information meeting held on the 6 December 2017.

The key points CEEP intends to raise are to:
- Avoid a definition of "worker" in the directive.
- Keep the nature of the directive as an information directive.
- Preserve the right to be able to refer to collective agreements in work contracts.
- Retain the role of on-call and on-demand workers in the public sector to ensure continuity of service.

5.1 A scope of application encompassing all workers in the EU

*Scope of the application of the directive – common definition of "worker"*

CEEP was concerned initially that the Commission would develop a separate definition of workers in the proposal on the basis of the ECJ rulings. However, following the meeting on the 6 December, we want to state that:

- We acknowledge the rulings of the European Court of Justice (CJEU) and their definition of a worker. If a direct reference is made to the ECJ rulings in order to define the scope of application of the directive (using the link of subordination as main basis) this would be a proper way forward for CEEP’s membership.

- An important question remains regarding the derogations. We understand that the scope of these derogations will be reduced in the coming proposal and will concern only very short-term contracts and “one-off contracts”. In the public sector in several Member States the derogation in article 1(2) of the directive giving the member states the right to omit certain type of workers is used, for example for on-call workers that are not employed on permanent basis. It should be underlined that the usage of on-call is not being used to avoid the requirements of the directive. However, this type of work arrangement is very loose, and therefore it would be difficult and in many cases even impossible to meet the information criteria required by the directive in force.
**Derogations rule article 1 nr. 2**

It is of great importance to the public sector that the derogation under article 1 (2) remains unchanged. However, if the present wording must be changed, the change should take the special obligation of the public sector into account, thus enabling the usage of short employments.

Our concern is:

- The Commission’s new proposal for a narrower derogation; “isolated, marginal and very short employment relationships, to avoid unnecessary administrative burden” does not accommodate the needs in the public sector.

- The public sector carries out some of the most important welfare tasks, which are characterized by a high degree of direct personal contact. This applies to e.g. the hospitals, kindergartens, schools, nursing homes, social institutions, etc.

- The citizens rely on stability regarding the services provided and therefore the need to attract staff with a freer connection in case of sudden illness and in other acute and unpredictable situations is crucial. Employees with a more flexible connection to the workplace constitute an absolute necessity as a supplement for the permanent employees in the public sectors.

**5.2 A right to information on the applicable working conditions**

*Extend the 'information package'*

CEEP believes that the present directive contains all relevant and essential elements and aspects of an employment relationship and of what the written contract should contain. Nonetheless, we welcome the inclusion of new elements of information in order to better adapt the directive to the Labour Market realities.

The Commission’s proposals a-g:

a) **The duration and conditions of the probation period**

CEEP is open to reinforcement of the directive on this point. If we understand this point correctly, the proposal only refers to the employee’s right to information regarding the duration and conditions of the probation period.

b) **The extent to which paid extra hours (overtime) can be requested on top of the number of guaranteed hours and its remuneration**:

Our concern is:
• The working time directive already deals with the amount of working hours per week. We do not wish to have more regulation about the details of overtime and payment, as these are already dealt with by the social partners at national level or through the managerial right.

• It is of fundamental importance that the employer can continue referring to a collective agreement, as stated in article 2 (3).

c) The public social security systems receiving contributions attached to the employment relationship in respect of pension, sickness, maternity and/or family leave, unemployment benefits and any health and/or social security protection provided by the employer.

CEEP is open to reinforcement of the directive on this point.

Our concern is:
• We do not have current concerns on this matter as long as it only refers to contributions attached to the employment relationship and the employers can settle by referring to a collective agreement or to existing laws.

d) More comprehensive information on the national law applicable in case of termination of contract (beyond the mere mention of the notice period, which is already foreseen by the current Directive)

CEEP is doubtful about reinforcement of the directive on this point.

Our concern is:
• There are many different rules that might apply when terminating a contract. It seems like a disproportionate administrative burden for the employer to refer to all national law applicable in case of termination of the contract. Furthermore, there is a substantial risk of wrongful references creating confusing and potentially escalating/starting a conflict.

Formal requirements

Our concern is:
• The present notification deadline is two months. CEEP supports more flexibility and the Commission’s approach (on the first day of work) seems to not allow for such a flexibility. CEEP would support a deadline of one month since the employers need adequate time to gather relevant information, and since the employer and employee must have a minimum period of one month to agree on pay and other terms related to the employment.

• The Commission’s proposal to have templates or online written statement models seems to go in the good direction as those are defined at the National level for instance by Social Partners directly.
5.3.1 Right to predictability of work non-permanent on-demand workers

Our concerns are:

- The purpose of having on-demand workers is that the employee can come to work with a short notice when e.g. a permanent employee calls in sick and there is a sudden and unpredictable need of assistance.

- The public sector carries out some of the most important welfare tasks, which are characterized by a high degree of direct personal contact. This applies to e.g. the hospitals, kindergartens, schools, nursing homes, social institutions, etc. The citizens rely on a stability regarding the services provided and there is therefore a need to attract staff that can come with a short notice in case of sudden illness and in other acute and unpredictable situations.

- It would alter the purpose of on demand workers if it was required to introduce reference hours and reference days in which work may be performed. If on-demand workers were to have a specific notice before work and reference hours of work, they would no longer be able to accommodate the operational needs of the public welfare services.

5.3.2 Right to request another form of employment and receive a reply in writing

Our concerns are:

- Employees already have the possibility to ask employers for a new form of employment, e.g. more hours, a more permanent contract or new assignments.

- The managerial right gives the employer the right to make the final decision to either agree or reject the employee's proposal, based on several parameters and according to what is in the best interest of the workplace. If the employer is obliged to give a written reply it would sharpen the employer’s burden of proof and lead to an unnecessary administrative burden.

5.4 Enforcement

Our concern is:

- CEEP finds that it is out of the scope of the EU to regulate national sanctions. It is up to member states and national courts to decide the right sanctions when not applying the directive.